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DENNIS JOSEPH RAIMONDO and
ERIC ANTHONY GARRIS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DENNIS JOSEPH RAIMONDO (a.k.a. JUSTIN RAIMONDO), an individual, and ERIC ANTHONY GARRIS, an individual,

Plaintiffs,

vs.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

No. 13-02295 JSC

PLAINTIFFS' NOTICE OF MOTION; MOTION TO COMPEL DISCOVERY RESPONSES FROM DEFENDANT FEDERAL BUREAU OF INVESTIGATION; AND SUPPORTING MEMORANDUM

Date: April 2, 2015
Time: 9:00 a.m.
Ctrm. F, 15th Fl.
Judge: Jacqueline Scott Corley

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NOTICE OF MOTION AND MOTION TO COMPEL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on Thursday, April 2, 2015, in Courtroom F of the United States District Court, Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California at 9:00 a.m., or as soon thereafter as this matter may be heard, pursuant to Federal Rule of Civil Procedure 37 and Civil Local Rule 37, Plaintiffs **DENNIS JOSEPH RAIMONDO** and **ERIC ANTHONY GARRIS (**"Plaintiffs"), will and hereby do move for an order compelling Defendant Federal Bureau of Investigation ("Defendant") to produce documents responsive to Plaintiffs' First Set of Requests for Production Propounded to Defendant ("RFP") Nos. 3 and 4, to provide a further response to Plaintiff Garris's First Set of Interrogatories Propounded to Defendant ("Garris Interrogatory") No. 3, and to provide a further response to Plaintiff Raimondo's First Set of Interrogatories Propounded to Defendant ("Raimondo Interrogatory") Nos. 5-11.

This Motion is made pursuant to Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure ("FRCP"), Civil Local Rule 37, and the Court's order dated December 18, 2014, on the ground that Defendant has not responded to interrogatories as required by FRCP 33 and has failed to permit inspection of documents as required by FRCP 34. Good cause exists for granting the relief because the requested documents and information are relevant to Plaintiffs' Privacy Act claim under 5 U.S.C. § 552a(e)(7) that alleges improper maintenance of records describing Plaintiffs' exercise of First Amendment rights, and relevant to rebutting Defendant's contention that any such records are properly maintained and fall within the law enforcement activity exception to the general prohibition on maintenance of such records.

This motion is without waiver to any future motion Plaintiff Garris may bring to compel responses to Plaintiff Garris's Second Set of Interrogatories, should Plaintiff Garris deem it necessary at a later date.

Plaintiffs' Motion is based on this Notice of Motion and accompanying Memorandum of Points and Authorities, the Declaration of Laura C. Hurtado ("Hurtado Decl."), and all other pleadings and matters of record in this case.

Pursuant to Federal Rule of Civil Procedure 37 and Civil Local Rule 37-1, Plaintiffs' counsel certifies that they met and conferred in good faith via telephonic and written communication and in person with counsel for Defendant in an effort to resolve the dispute addressed herein without court involvement. While the parties resolved certain issues through the meet-and-confer process, they were unable to reach an agreement on the issues addressed in this Motion.

Dated: January 22, 2015.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP
THOMAS V. LORAN III
ANDREW BLUTH
LAURA C. HURTADO

By /s/ Laura C. Hurtado
Laura C. Hurtado

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this FOIA and Privacy Act case, Plaintiffs seek to compel further responses to discovery requests seeking information and documents that are eminently relevant to Plaintiffs' Privacy Act claim against Defendant for improper maintenance of records describing Plaintiffs' First Amendment activity. Plaintiffs propounded the subject discovery requests in August 2014. Despite Plaintiffs' attempts to meet and confer with Defendant regarding its discovery responses, Defendant continues to assert various privileges and objections in boilerplate fashion and insists on withholding highly relevant information from Plaintiffs. Defendant's withholding of this information is prejudicial to Plaintiffs as it undermines Plaintiffs' ability to determine the credibility of Defendant's assertion that its maintenance of records describing Plaintiffs' First Amendment activity falls within a narrow exception to the general prohibition on maintenance of such records. Plaintiffs respectfully request that the Court order Defendant to provide further responses to Garris Interrogatory No. 3, Raimondo Interrogatory Nos. 5-11 and RFP Nos. 3-4, each of which seeks information related to the Privacy Act claim described herein.

II. STATEMENT OF ISSUES TO BE DECIDED

Each of the requests at issue seek information regarding Defendant's maintenance of records describing Plaintiffs' First Amendment activity, including Defendant's maintenance of an FBI memorandum dated April 30, 2004 (the "April 30 Memo"), which recommended that a preliminary investigation be opened into each of Plaintiffs. The April 30 Memo memorializes a threat assessment of Antiwar.com, an anti-interventionist website that publishes news and opinion articles about U.S. foreign and military policy. By review of documents obtained through their FOIA request, Plaintiffs discovered that the only basis for the threat assessment, other than Plaintiffs' First Amendment activity, was a reckless and mistaken belief on the part of the FBI that Plaintiff Garris, managing editor of Antiwar.com, made a threat to hack the FBI website. This error had been memorialized in an FBI memorandum dated January 7, 2002 (the "January 2002 Memo"), and **the FBI has**

since admitted that Plaintiff Garris did not threaten to hack the FBI but instead reported to the FBI a hacking threat directed to the Antiwar.com website. Still, the misdirected April 30 Memo remains in the FBI's system of records, despite the evaporation of any arguable law enforcement justification for maintaining descriptions and examples of Plaintiffs' First Amendment activity.[1]

This Motion thus presents the following issues:

1. Whether Defendant is obligated to produce documents withheld, and reduce redactions in documents produced, in response to RFP Nos. 3 and 4 concerning documents that describe Plaintiffs' First Amendment protected activity;

2. Whether Defendant is obligated to provide a further response to Garris Interrogatory No. 3, which seeks the identity of the author of the January 2002 Memo, which memorandum erroneously states that Plaintiff Garris threatened to hack the FBI website and was cited in the April 30 Memo as the basis for the April 30 Memo; and

3. Whether Defendant is obligated to provide full responses to Raimondo Interrogatory Nos. 5-11, each of which seek facts relevant to determining the lawfulness of Defendant's maintenance of records describing Plaintiffs' exercise of First Amendment rights.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Discovery Requests and Defendant's Responses Thereto

Plaintiffs served their first set of discovery requests on August 15, 2014. They are comprised of the following: Plaintiff Garris's First Set of Interrogatories; Plaintiff Raimondo's First Set of Interrogatories; Plaintiffs' First Set of Requests for Production (collectively, the "Discovery Requests").[2] Hurtado Decl. at ¶ 2, Exs. A, B, and C.

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[1] Plaintiffs do not concede that the FBI's maintenance of the April 30 Memo was justified at the time it began. On the contrary, memorializing the FBI's threat assessment violated the Privacy Act, 5 U.S.C. § 552a(e)(7).

[2] Plaintiffs also served Plaintiffs' First Set of Requests for Admission on August 15, 2014. There are no outstanding discovery issues pertaining to the Requests for Admission. (continued…)

Defendant's discovery responses were due September 15, 2014. Defendant requested and Plaintiffs agreed to a one-month extension for Defendant's responses. Defendant served its responses to the Discovery Requests on October 15, 2014 (and served supplemental responses to Raimondo's First Set of Interrogatories on December 12, 2014) and did not provide a privilege log until January 8, 2015. Hurtado Decl. at ¶ 4-6, Exs. D, E, F, and G.

B. Relevant Meet-and-Confer History

The meet-and-confer history reveals Defendant's intent to delay discovery proceedings and improperly withhold information from Plaintiffs. At Plaintiffs' request, the parties met and conferred by telephone on October 28, 2014. During that call, Plaintiffs' counsel informed counsel for Defendant that nearly every one of Defendant's discovery responses was deficient due, in large part, to unsubstantiated assertions of privilege, including the law enforcement privilege and Defendant's assertion of classified as a blanket discovery privilege. Plaintiffs' counsel identified several global issues, which, if resolved, would limit the scope of issues to be addressed in this Motion. One such issue was Defendant's failure to provide a privilege log to Plaintiffs as required by this Court's Civil Standing Order. Defendant argued that it need not provide a privilege log on the grounds that the *Vaughn* Index provided sufficient information. Hurtado Decl. at ¶ 7.

The parties appeared at a Case Management Conference on November 6 and the Court set a schedule based on counsel's schedules, requiring the parties to complete their meet-and-confer efforts by December 19. In a meet-and-confer letter dated November 25, 2014, Plaintiffs provided Defendant with a comprehensive explanation of the ways in which Defendant's discovery responses are inadequate. Therein, Plaintiffs reiterated that Defendant had been obligated to provide a privilege log by October 29, detailed the ways in

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(…continued)

Pursuant to Civil Local Rule 37-2 a copy of the Discovery Requests and responses thereto are attached to the Hurtado Declaration. For the court's convenience, Plaintiffs also attach a chart setting forth each discovery request, each response as to which Plaintiffs seek relief through this Motion, and the requested relief. Hurtado Decl. at ¶ 21, Ex. L.

which the *Vaughn* Index failed to provide the information required in a privilege log, and requested a written response, including a privilege log. Hurtado Decl. at ¶¶ 10-11; Ex. H.

On December 8, 2014, counsel for Defendant called Plaintiffs' counsel and stated that Defendant was agreeable to providing a privilege log but would likely not be able to do so in time for the parties to complete their meet and confer by December 19, the deadline originally ordered by this Court. Hurtado Decl. at ¶ 13. Plaintiffs declined to agree to an extension of time. Defendant moved for an order extending the discovery deadlines. Plaintiffs opposed. On December 18, the Court issued a revised schedule ordering the parties to complete their meet and confer by January 9, 2015.

Via e-mail correspondence on December 18, 2014, Defendant requested to postpone the in-person meet and confer until January 7, 8, or 9. The parties agreed to meet on January 8 and Plaintiffs' counsel requested that Defendant provide a response to Plaintiffs' meet-and-confer letter, including the privilege log, no later than 72 hours in advance of the meet and confer. Plaintiffs' counsel e-mailed counsel for Defendant on December 31, on January 5, and again on January 6 after not having received a response from Defendant regarding the January 8 meet and confer. At 6:41PM on January 6, counsel for Defendant responded to Plaintiffs' counsel's e-mail, requested that Plaintiffs agree to move the meet and confer to January 9, and suggested Plaintiffs had not previously requested the privilege log in advance of the meet and confer, stating: "As I understand your current e-mail, you are now also requesting a copy of the privilege log in advance of the meet and confer." Hurtado Decl. at ¶¶ 16, 17, Ex. I.

Counsel for Defendant e-mailed a copy of Defendant's response to the November 25 meet-and-confer letter on the afternoon of January 7. Counsel for Defendant did not provide a copy of the privilege log and a twelve-page supplemental production of documents until January 8 at 5:47 PM. The meet and confer was scheduled for 12:15 PM the next day. Hurtado Decl. at ¶¶ 18, 19, Exs. J and K.

The in-person meet and confer lasted approximately four hours. The focus of the meet and confer from Plaintiffs' perspective was to understand the scope of the privilege

log and to understand Defendant's position regarding the law enforcement privilege and its assertion that classified documents enjoy a blanket civil discovery privilege. Plaintiffs also aimed to clarify any terms Defendant identified in its discovery responses as vague and ambiguous. Hurtado Decl. at ¶ 20. As a result of the meet and confer, Plaintiffs were able to narrow the request and issues to be included in this Motion.

IV. DISCOVERY REQUESTS AT ISSUE

Plaintiffs seek to compel further responses to eight interrogatories and two requests for production. In particular, Plaintiffs challenge insufficient answers as well as Defendant's withholding of information, documents, or portions of documents based on the law enforcement privilege, an asserted privilege for "classified information," and privacy interests where the existing protective order in this case is sufficient to address any privacy concerns. The following requests are the subject of this Motion:

> **Garris Interrogatory No. 3**: IDENTIFY the PERSON who drafted the JANUARY 2002 MEMO.
>
> **Raimondo Interrogatory No. 5**: EXPLAIN how YOUR act to MAINTAIN the APRIL 30 MEMO is pertinent to and within the scope of an authorized law enforcement activity.
>
> **Raimondo Interrogatory No. 6**: EXPLAIN how YOUR act to MAINTAIN the CHRONICLES INTELLIGENCE ASSESSMENT ARTICLE is pertinent to and within the scope of an authorized law enforcement activity.
>
> **Raimondo Interrogatory No. 7**: EXPLAIN how YOUR act to MAINTAIN the PRAVDA ARTICLE is pertinent to and within the scope of an authorized law enforcement activity.
>
> **Raimondo Interrogatory No. 8**: EXPLAIN how YOUR act to MAINTAIN each of the eleven enclosures identified in the APRIL 30 MEMO, except for the CHRONICLES INTELLIGENCE ASSESSMENT ARTICLE and the PRAVDA ARTICLE, is pertinent to and within the scope of an authorized law enforcement activity.
>
> **Raimondo Interrogatory No. 9**: IDENTIFY the PERSON who made the recommendation in the April 30 Memo that a "PI be opened to determine if Eric Anthony Garris and/or Justin Raimondo are engaging in, or have engaged in activities which constitute a threat to National Security on behalf of a foreign power."
>
> **Raimondo Interrogatory No. 10**: IDENTIFY all PERSONS YOU know or believe have knowledge or information relating to the APRIL 30 MEMO, except for any PERSON identified in Interrogatory No. 9.

Raimondo Interrogatory No. 11: To the extent that YOUR response to any of the Requests for Admission served concurrently with these Interrogatories is anything other than an unqualified admission: (i) state the number of the specific Request for Admission; (ii) state all facts upon which YOU base YOUR response(s); (iii) state the names, addresses, and telephone numbers of all PERSON who have knowledge of those facts; and (iv) IDENTIFY all DOCUMENTS and other tangible things that support YOUR response(s) and (v) state the name, address, and telephone number of the PERSON who has each DOCUMENT or thing.

RFP No. 3: All DOCUMENTS not yet produced by DEFENDANT to PLAINTIFFS in this ACTION that DESCRIBE how GARRIS "exercises rights guaranteed by the First Amendment," as that phrase is defined in 5 U.S.C. § 552a(e)(7).

RFP No. 4: All DOCUMENTS not yet produced by DEFENDANT to PLAINTIFFS in this ACTION that DESCRIBE how RAIMONDO "exercises rights guaranteed by the First Amendment," as that phrase is defined in 5 U.S.C. § 552a(e)(7).

Insufficient responses: Defendant provided no substantive response to Garris Interrogatory No. 3. Other than a reference to the redacted version of the April 30 Memo itself, Defendant has failed to provide any response to Raimondo Interrogatory Nos. 5-8, each of which asks Defendant to state how its act to maintain the April 30 Memo and its attachments is pertinent to and within the scope of an authorized law enforcement activity. This information goes to the heart of Plaintiffs' Privacy Act claim and must be provided in discovery or barred from use later in this case.

Improper invocation of privilege: Although Defendant did provide substantive responses to Raimondo Interrogatory Nos. 9-11 and RFP Nos. 3-4, each response is deficient as Defendant has withheld information based on boilerplate privilege objections, claiming among other unsubstantiated objections and privileges, the law enforcement privilege, a blanket privilege for material designated as "classified," and privacy objections that are resolved by the protective order in place in this action.

V. ARGUMENT

A. The Information Plaintiffs Seek to Compel is Reasonably Calculated to Lead to the Discovery of Admissible Evidence

A party may move to compel discovery when responses are evasive or incomplete. Fed. R. Civ. P. 37(a)(4); *see* Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv). Plaintiffs are entitled to

> discovery regarding any non-privileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). The scope of discovery has been construed broadly to encompass any matter that bears on, or that reasonably could bear on, any issue that is or may be in the case. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1970).

Plaintiffs seek an order compelling two categories of information: (1) further responses to eight interrogatories, each of which seeks information highly relevant to Plaintiffs' claim under the Privacy Act for improper maintenance of records describing Plaintiffs' exercise of First Amendment rights, specifically whether Defendant's maintenance of records describing Plaintiffs' First Amendment activity falls outside the general proscription by being pertinent to and within the scope of authorized law enforcement activity; and (2) further responses to two requests for production, each of which seeks records that describe how each Plaintiff exercises his First Amendment rights. As to the first category of information, information pertaining to Defendant's collection and maintenance of records describing Plaintiffs' First Amendment activity is relevant to Plaintiffs' claim under the Privacy Act, 5 U.S.C. § 552a(e)(7) and Defendant's responses are insufficient on their face.[3] With respect to both categories, Defendant has made boilerplate assertions of privilege and failed to provide even a generalized, non-classified, explanation of how the asserted privileges apply.

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[3] During the parties' in-person meet and confer, a difference of opinion arose as to whether the Privacy Act requires that retention of records describing First Amendment protected activities be within the scope of an *ongoing* authorized law enforcement activity. Plaintiffs do not seek to compel documents withheld based on Defendant's relevance objection based on its statutory interpretation, reserving argument regarding the scope of the statute for summary judgment. Plaintiffs do, however, reserve the right to seek that Defendant be precluded from introducing evidence at a later stage of this litigation if such evidence was responsive to Plaintiffs' Discovery Requests and withheld on relevance grounds tied to Defendant's statutory interpretation.

B. Defendant Has Not Supported Its Boilerplate Privilege Objections.

Defendant has withheld information based on numerous privilege objections, including the law enforcement privilege and alleged privileges under the Privacy Act. Likewise, Defendant has asserted that material designated as "classified" enjoys a blanket civil discovery privilege. The party asserting the privilege must establish the essential elements of the privilege. *See U.S. v. Ruehle*, 583 F.3d 600, 607-608 (9th Cir. 2009). Defendant has failed to invoke its asserted privileges properly or otherwise support them. Accordingly, this Court should compel Defendant to produce further responses to Plaintiffs' written discovery.

1. Objections Based on Law Enforcement Privilege

The law enforcement privilege is qualified, not absolute. Although the Ninth Circuit has not yet outlined a test for evaluating assertions of the law enforcement privilege, district courts within the Northern District of California have utilized the D.C. Circuit's *In Re Sealed Case* test when balancing the interests of disclosure against the need to keep information secret. *Ibrahim v. DHS*, No. 06-00545, 2013 WL 1703367, at *4 (N.D. Cal. Apr. 19, 2013) (Alsup, J.); *U.S. v. Larson*, No. 12-cr-00886, 2014 WL 5696204, at *4 (N.D. Cal. Nov. 4, 2014) (Freeman, J.); *S.E.C. v. Gowrish*, No. 09-05883, 2010 WL 1929498, at *1-2 (N.D. Cal. May 12, 2010) (Illston, J). To invoke the law enforcement privilege, the following threshold requirements must be met: (i) the head of the department having control over the matter must formally assert the privilege (this can be done through a declaration); (ii) the assertion must be based on personal consideration by that official; and (iii) the assertion must state with specificity the rationale of the claimed privilege. *In Re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988).

If the threshold requirements are met, the court is required to engage in a balancing test and weigh the interest of nondisclosure against the need of a particular litigant to access the allegedly privileged information. Courts must consider the following factors:

> (1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identifies

> disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed; (7) whether any interdisciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to plaintiff's case.

Ibrahim, 2013 WL 1703367, at *4-5, quoting *In Re Sealed Case*, 856 F.2d at 272.

a. RFP Nos. 3 and 4

During the meet and confer, Defendant explained that all documents listed in the privilege log that begin with the prefix "Antiwar" are responsive to RFP Nos. 3-4 and all documents that begin with the prefix "USA" are responsive to RFP Nos. 1-2. RFP Nos. 3-4 are the only requests for production at issue in this Motion.[4] Plaintiffs move to compel production of numerous redacted portions of Antiwar 57-66, which comprises the April 30 Memo; Antiwar 1-6, which has been withheld in significant part and which counsel for Defendant stated during the in-person meet and confer was a response to a complaint; and Antiwar 7-16, which has also been withheld in significant part, and which during the in-person meet and confer counsel for Defendant indicated may contain a discussion of an article written by one of Plaintiffs. Hurtado Decl. at ¶ 22, Exs. M and N.

i. April 30 Memo, Antiwar 57-66

Despite Plaintiffs' explanation of the threshold requirement of the law enforcement privilege in the November 25 meet-and-confer letter, Defendant has failed to provide a detailed declaration from a department head or any other person with personal knowledge of any specific basis for application of the law enforcement privilege as to RFP Nos. 3-4. Defendant's privilege log sheds little light on the matter, for several reasons. First,

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[4] RFP Nos. 1-2 seek all documents referenced or relied on by Defendant in responding to Garris and Raimondo's First Set of Interrogatories. To the extent the Court orders Defendant to provide further responses to any the interrogatories at issue herein, Plaintiffs reserve the right to seek further responses to RFP Nos. 1-2.

Defendant lists the same justification for both the law enforcement and asserted "classified privilege." For the April 30 Memo, Antiwar 57-66, Plaintiffs believe the following may be relevant to Defendant's assertion of the law enforcement privilege:

> The pages have information containing the names and/or identifying information of FBI Special Agents (SA's) and/or support personnel; names and/or identifying information of third parties who provided information to the FBI; names and/or identifying information of persons merely mentioned; information containing the names and/or identifying information of third party subjects of, or file numbers assigned to pending investigations; information containing the names and/or identifying information of individuals who provided information under an implied assurance of confidentiality; information pertaining to the investigative focus of a specific investigation; information pertaining to the application of certain sensitive investigative techniques and methods used within specific investigations; sensitive FBI files/subfiles; and the names and/or numbers and/or alpha designators of sensitive FBI squads/units.

However, as illustrated with this example, Defendant's "brief summary of facts" is a lengthy list of assertions about the character of redacted or withheld information and does not specify which reason applies to which redaction box. Moreover, the "facts" themselves fail to provide details critical to Plaintiffs, such as whether the "names and/or identifying information of persons merely mentioned" refer to persons with any relationship to Plaintiffs or Antiwar.com or whether for "information pertaining to the investigative focus of a specific investigation" the specific investigation is one for which Antiwar.com is a subject or merely a source.[5] The April 30 Memo includes redactions of large paragraphs with little context to clue Plaintiffs in to which of the listed justifications may apply. Defendant's failure to provide a non-classified explanation of which justifications are meant to apply to each

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[5] Plaintiffs do not challenge the withholding of case file numbers. As to individuals, Defendant has already provided the names of two individuals who made the recommendation in the April 30 Memo to open a preliminary investigation of Plaintiffs in response to Raimondo Interrogatory No. 9 and the names of three individuals who have information relating to the same in response to Raimondo Interrogatory No. 10. As explained below, *infra* p. 21, identities of other government officials can be adequately protected through the existing protective order in this action. The propriety of withholding other identifying information about third parties depends on the actual law enforcement interest at stake as well as their relationship to Plaintiffs, *e.g.*, are they subjects of investigation already publicly known to be of interest to the FBI or persons who have written with or for the Plaintiffs' online magazine or are they truly secret targets or confidential informants?

redaction or any description of the law enforcement interest at stake for the various redactions leaves Plaintiffs in the dark, unable to assess (much less counter) Defendant's assertion of privilege.[6] Given the context provided by what the April 30 Memo *does* reveal, Plaintiffs have no choice but to assume the redacted and withheld information is of interest and relevance to Plaintiffs' claims and Defendant's defenses.

Even if Defendant had met the threshold requirements for asserting the privilege, the *In Re Sealed Case* factors weigh in favor of disclosure. The requested information is important to Plaintiffs' Privacy Act claim which alleges that Defendant has improperly maintained records describing Plaintiffs' First Amendment activity (*Factor 10*). This claim is not frivolous and is brought in good faith (*Factor 8*). The requested information is not available from any other sources to which Plaintiffs have access (*Factor 9*). Moreover, Plaintiffs are not actual or potential defendants in any criminal proceeding that is pending or is reasonably likely to follow from the threat assessment memorialized in the April 30 Memo; indeed, a subsequent FBI memorandum dated July 29, 2004, declined the recommendation made in the April 30 Memo to open a preliminary investigation of Plaintiffs (*Factor 5*). In addition, Plaintiffs have no information suggesting that the investigation referenced in the April 30 Memo is still underway (*Factor 6*).[7] Plaintiffs have no information that any interdepartmental disciplinary proceedings have arisen from the information contained in the April 30 Memo (*Factor 7*). There is no indication that governmental self-evaluation or program improvement will be impacted by disclosure of the requested information (*Factor* 3). Plaintiffs do not know if the information sought is factual or evaluative summary (*Factor 4*). Finally, to the extent that truly confidential sources will

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[6] By limiting the objections Plaintiffs seek to challenge in this Motion, Plaintiffs do not hereby waive their right to challenge the FOIA exemptions claimed within the documents produced in response to Plaintiffs' FOIA request, some of which are responsive to Plaintiffs' document requests.

[7] While the privilege log makes reference to a pending investigation, it is impossible to determine if there is such an investigation due to the use of the word "or" as follows: "information containing the names and/or identifying information of third party subjects of, ***or*** file numbers assigned to ***pending*** investigations." Hurtado Ex. K at 2 (emphasis added).

be impacted the privilege could be upheld. (*Factors 1 and 2*). *See supra* p. 12 n.5. Thus, with the possible exception of identifying information for government informants, all of the factors balance in favor of disclosure of the information contained in the April 30 Memo.

ii. Antiwar 1-6 and Antiwar 7-16

Defendant has failed to provide a declaration from a department head with personal knowledge of any specific basis for asserting the law enforcement privilege as to Antiwar 1-6[8] or Antiwar 7-16. Nevertheless, Defendant has withheld the pages marked Antiwar 1-3, 8, and 10-16 in their entireties and significantly redacted the pages marked Antiwar 7 and 9 based on insufficient assertions about the nature of the withheld information. The privilege log states the following basis for the withholdings in Antiwar 1-6:

> These pages have information containing the names, identifying information of or activities of third party subjects of, or file numbers assigned to pending investigations; information containing the names and/or identifying information of FBI Special Agents (SA's) and/or support personnel; names and/or identifying information of third parties who provided information to the FBI; names and or identifying information of persons merely mentioned; information containing the names and/or identifying information of individuals who provided information under implied assurance of confidentiality; information pertaining to the investigative focus of a specific investigation; information pertaining to the application of certain sensitive Domestic Terrorism (DT) and International Terrorism (IT) investigative techniques and methods used within specific Investigations; sensitive FBI files/sub files; the names and/or numbers and/or alpha designators of sensitive FBI squads/units.

The log states the following basis for the withholdings in Antiwar 7-16:

> These pages have information containing the names and/or identifying information of FBI Special Agents (SA's) and/or support personnel; names and/or identifying information of third parties who provided information to the FBI; names and/or identifying information of persons merely mentioned; information pertaining to the investigative focus of a specific investigation; the types of investigations (preliminary or full) in specific IT cases and the dates associated with these types of investigations; information pertaining to the application of certain sensitive investigative techniques and methods used within specific investigations; sensitive FBI files/sub files; the names and/or numbers and/or alpha designators of sensitive FBI squads/units.

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[8] The privilege log lists Antiwar 1-6 as one entry. It appears that the pages marked Antiwar 4-6 have been produced in their entirety. To the extent they have, Plaintiffs only seek to compel production of the pages marked Antiwar 1-3.

As with the April 30 Memo, the "brief summary of facts" for both documents lumps together its characterizations of the redacted and withheld information and the "facts" fail to provide details necessary to understand the relationship of the withheld information to Plaintiffs or Antiwar.com. *See supra* pp. 11-13 Given the information that Plaintiffs know about the documents—that one is a response to a complaint, the subject of which is unknown to Plaintiffs but has been produced in response to a request for documents describing Plaintiffs' First Amendment activity (Antiwar 1-6), and that the other is an FBI memorandum dated August 18, 2004 that may contain a discussion of an article written by one of Plaintiffs (Antiwar 7-16)—Plaintiffs must assume that the withheld information is relevant to their Privacy Act claims.[9] *See* Hurtado Decl. at ¶ 22.

Apart from Defendant's failure to provide the required statement from a department head to assert the law enforcement privilege, the *In Re Sealed Case* factors weigh in favor of disclosure. The requested information is relevant to Plaintiffs' non-frivolous Privacy Act claim for improper maintenance of records describing Plaintiffs' First Amendment activity (*Factors 8 and 10*). Plaintiffs are unaware of any other source from which they can obtain the requested information (*Factor 9*). Plaintiffs are not actual and do not believe they are potential defendants in any criminal proceeding that is pending or is reasonably likely to follow from any incident referenced in the subject documents (*Factor 5*). In addition, Plaintiffs have no information suggesting any investigation referenced in Antiwar 1-6 or Antiwar 7-16 is still underway (*Factor 6*).[10] Plaintiffs have no information that any interdepartmental disciplinary proceedings have arisen from the information contained in the subject documents (*Factor 7*). Plaintiffs do not know if the information sought is factual or

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[9] As explained in footnote 5, Plaintiffs do not challenge the withholding of case file numbers.

[10] The privilege log entry for Antiwar 1-6 references a pending investigation, Plaintiffs do not know if there is such an investigation—much less whether any purported investigation pertains to themselves or Antiwar.com—due to the use of "or" as follows: "information containing the names, identifying information of or activities of third party subjects of, ***or*** file numbers assigned to ***pending*** investigations." Hurtado Ex. K at 1. (emphasis added).

evaluative summary (*Factor 4*). There is no indication that governmental self-evaluation or program improvement will be impacted by disclosure of the requested information (*Factor 3*). As with the redactions to the April 30 Memo, the privilege may be upheld to the extent that specific justifications as to particular confidential sources are provided (*Factors 1 and 2*), and therefore, with that possible exception, all of the factors balance in favor of disclosure of the requested information.

b. Raimondo Interrogatory Nos. 5-8

Raimondo Interrogatory Nos. 5-8 ask Defendant to state how its maintenance of the April 30 Memo, including its eleven enclosures, is pertinent to and within the scope of an authorized law enforcement activity. Defendant fails to provide a substantive response to Interrogatory Nos. 6-8. In response to Interrogatory No. 5, Defendant states, "Unclassified/non-privileged responsive information is contained in the redacted versions of the 'APRIL 30 MEMO.'" Plaintiffs move to compel further responses to Interrogatory Nos. 5-8, each of which seek information that is critical to Plaintiffs' ability to sustain its Privacy Act claim for improper maintenance of records describing their First Amendment activity.

Defendant has provided no declaration to meet the threshold requirement for its assertion of the law enforcement privilege. First, as to each interrogatory, Defendant has merely asserted that it "objects that the information requested is classified ***and/or*** protected by the law enforcement privilege." Defendant's use of "and/or" makes it unclear if Defendant intends to assert the law enforcement privilege as to each interrogatory.[11] Regardless, this bare bones assertion of the law enforcement privilege is woefully insufficient to uphold the privilege. *See Burlington Northern & Santa Fe Ry. v. United*

[11] During the parties' in-person meet and confer, counsel for Defendant explained Defendant's use of "and/or." It is Defendant's position that in certain instances the requested information is protected from disclosure under the law enforcement privilege, in others, the requested information is classified, and in others explaining the basis for Defendant's assertion of the law enforcement privilege would allegedly require the government to divulge classified information. Hurtado Decl. ¶ at 20.

States Dist. Court, 408 F.3d 1142, 1149-1150 (9th Cir. 2005) (failure of "sophisticated litigant" to assert timely privilege claim results in waiver). Second, Defendant has failed to meet FRCP 33(b)(4)'s basic requirement that "the grounds for objecting to an interrogatory must be stated with specificity."

Furthermore, although Defendant has provided a "substantive" response to Raimondo Interrogatory No. 5, its response is deficient. FRCP 33(d) provides:

> If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records . . , ***and*** if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by: . . . (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Defendant has made no showing that the burden of deriving or ascertaining the answer will be the same for Plaintiffs as for Defendant. It would not. Plaintiffs are not law enforcement officials. Plaintiffs' ability to review the April 30 Memo, which is the subject of this interrogatory, and make meaning of its contents is significantly less than that of Defendant's, whose mission is law enforcement.

By failing to provide any specific basis for its assertion of the law enforcement privilege, Defendant has deprived Plaintiffs and the Court of the ability to engage in the requisite balancing test required by the *In Re Sealed Case* to determine if the law enforcement privilege should be upheld. There is no reason to believe it should. *See supra* pp. 13-14. Defendant should be compelled to provide a further written response to Raimondo Interrogatory Nos. 5-8 and precluded from relying on information at a later stage of this litigation if such information was responsive to Interrogatory Nos. 5-8 but withheld from Plaintiffs on the basis of the law enforcement privilege.

c. Raimondo Interrogatory No. 11

This interrogatory seeks the basis of Defendant's denials of the requests for admission ("RFA"s) contained in Plaintiffs' First Set of RFAs. In response to Interrogatory No. 11, Defendant addressed its denials of RFA Nos. 6, 7, 8, and 11. The subject of these RFAs is whether Defendant's maintenance of the April 30 Memo was pertinent to and

within the scope of an authorized law enforcement activity, or otherwise expressly authorized by statute, either at the time Defendant began to maintain the April 30 Memo or currently. The requested information is highly relevant to Plaintiffs' Privacy Act claim under 5 U.S.C. § 552a(e)(7).

With respect to its denials of RFA Nos. 6, 7, 8, and 11, Defendant asserted that all facts and documents upon which its denials are based are "classified and/or protected by the law enforcement privilege" and that "unclassified/non-privileged information" is contained in the redacted version of the April 30 Memo. Each response is deficient. Defendant provided no declaration to properly assert the law enforcement privilege, assuming it is Defendant's intention to assert it. Because Defendant has failed to provide them, there are no facts to weigh in consideration of the *In Re Sealed Case* factors. Even so, Plaintiffs have no reason to believe that the *In Re Sealed Case* factors weigh in favor of withholding the requested information. *See supra* pp. 13-14. Defendant should be compelled to provide a written response to Raimondo Interrogatory No. 11.[12]

2. Classified Information

Defendant improperly claims a blanket civil discovery privilege for any material designated as "classified." An en banc panel of the Ninth Circuit has stated unequivocally that, "an executive decision to classify information is insufficient to establish that the information is privileged." *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1082 (9th Cir. 2010). Defendant has offered no binding case law to the contrary. Plaintiffs acknowledge, nonetheless, that in limited circumstances, classified information may be withheld in civil discovery pursuant to the state secret privilege. Defendant has not asserted this privilege, so it does not apply here.[13]

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[12] As with Defendant's reference to the redacted April 30 Memo in response to Raimondo Interrogatories Nos. 5-8, the document on its own is an insufficient response and, unless Defendant provides an appropriate supplemental response, it should be precluded from relying on additional responsive information later in this litigation.

[13] "The extension of the state secret privilege is not a given, nor an absolute." *Ibrahim v. DHS*, No. 06-00545 WHA, at 1 (N.D. Cal. Apr. 2, 2013) (Dkt. No. 462). Similar to the (continued…)

a. RFP Nos. 3 and 4

The April 30 Memo is the only document responsive to RFP Nos. 3-4 for which Plaintiffs seek to compel disclosure of information over Defendant's assertion of "classified" as a blanket discovery privilege. In its boilerplate response to RFP Nos. 3-4, Defendant states that the requests "seek documents that are classified and/or protected by the law enforcement privilege." Again, the privilege log fails to shed further light on Defendant's basis for withholding "classified" information contained in the April 30 Memo. Although the privilege log combines facts purportedly supporting Defendant's assertion of both the law enforcement and so-called "classified" privilege, Plaintiffs believe the following excerpt may be relevant to Defendant's assertion that "classified" information is privileged (Hurtado Ex. K at 2):

> These pages have information classified at the Secret level relating to intelligence activities, sources and methods exempt from disclosure and properly classified under E.O. 13,526 § 1.4(c); and to foreign relations or foreign activities of the United States, including confidential sources, exempt from disclosure and properly classified under E.O. 13,526 § 1.4(d). These pages also contain information withheld pursuant to § 102A(i)(1) of the National Security Act of 1947 ("NSA") as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), 50 U.S.C. § 3024(i)(1).

This statement is not sufficient. To the extent there is information contained in the April 30 Memo that has been classified, Defendant has only assumed, not shown, that there is a "reasonable danger that compulsion of the evidence will expose . . . matters which, in the

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(…continued)
law enforcement privilege, there is a procedural threshold to invoking the state secret privilege. "To ensure that the privilege is invoked no more often or extensively than necessary . . . [t]here must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer." *Mohamed*, 614 F.3d at 1080 (internal quotations omitted). If the procedural requirements for invoking the privilege are met, the Ninth Circuit requires courts to undertake the following:

> The court must sustain a claim of privilege when it is satisfied, from all the circumstances of the case, that there is a *reasonable* danger that compulsion of the evidence will expose . . . matters which, in the interest of national security, should not be divulged. *If* this standard is met, the evidence is absolutely privileged, irrespective of the plaintiffs' countervailing need for it. [E]ven the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that [state] secrets are at stake.

Mohamed, 614 F.3d at 1081 (internal quotations and citations omitted) (emphasis added).

interest of national security should not be divulged." *Mohamed*, 614 F.3d at 1081 (standard for applying state secret privilege).

b. Raimondo Interrogatory Nos. 5-8 and 11

These interrogatories seeks information relating to how Defendant's maintenance of the April 30 Memo, including its enclosures, is pertinent to and within the scope of an authorized law enforcement activity or otherwise expressly authorized by statute. Other than referencing the April 30 Memo in its responses to Interrogatory Nos. 5 and 11, Defendant has objected to these requests on the grounds that they seek information that is "classified and/or protected by the law enforcement privilege." This boilerplate objection provides no basis to assess Defendant's assertion of classified as a blanket discovery privilege. Neither has Defendant attempted to assert the state secret privilege as a basis for its withholdings. *Mohamed*, 614 F.3d 1082 (no blanket discovery privilege for "classified" information). This Court should find that Defendant waived any potential privilege related to the allegedly "classified" information responsive to Raimondo Interrogatory Nos. 5-8 and 11 and compel Defendant to provide further responses. *See Burlington Northern & Santa Fe Ry.*, 408 F.3d at 1149-1150.

To the extent Defendant is permitted to withhold any "classified" information from Plaintiffs, this Court should order Defendant to produce unclassified summaries of the withheld information. The Ninth Circuit has approved a "case-by-case" approach of identifying "reasonable measure[s] to mitigate the potential unfairness" of allowing the government to use classified information. *Al Haramain Islamic Foundation, Inc. v. U.S. Dep't of Treasury*, 686 F.3d 965, 982-84 (9th Cir. 2011) (due process challenge to government's reliance on classified information for terrorist designation of organization). One such measure is having the government provided unclassified summaries of the classified materials. *Ibid.* Absent unclassified summaries, there will be no record on appeal to which Plaintiffs would have access in order to challenge or defend the Court's decision.

C. Defendant's Privacy Objections Are Meritless

In its responses to Plaintiffs' Discovery Requests, Defendant asserted objections to RFP Nos. 3-4, Garris Interrogatory No. 3, and Raimondo Interrogatory No. 9 based on privacy grounds and/or that the requests seeks private information concerning third parties that is protected from disclosure by statutes, including the Privacy Act.

The Privacy Act prohibits the government from disclosing "any record . . . except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." 5 U.S.C. § 552a(b). There are twelve enumerated exceptions to the statute, one of which is disclosure "pursuant to the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). This Court entered a protective order in this action on November 21, 2014. *See* Dkt. No. 39. The existing protective order is sufficient to protect the requested information. *See Vietnam Veterans of Am. v. CIA*, No. 09-0037, 2011 U.S. Dist. LEXIS 135313, at 8-9 (N.D. Cal. Nov. 23, 2011); *see also Artis v. Deere & Co.* 276 F.R.D. 348, 354 (N.D. Cal. 2001) (constitutional right to privacy is not absolute).

1. RFP Nos. 3-4

RFP Nos. 3-4 seek documents describing Plaintiffs' exercise of First Amendment activity. Defendant does not raise "privacy" as an objection to any documents identified in its privilege log that are responsive to RFP Nos. 3-4. Thus, Plaintiffs assume Defendant's assertion of a privacy objection in its response to RFP Nos. 3-4 was made in error. On the other hand, if Defendant is withholding information based on a privacy objection, Plaintiffs request this Court order full disclosure of such information as Defendant has failed to uphold its burden in asserting the privilege.

2. Garris Interrogatory No. 3

Garris Interrogatory No. 3 seeks the identity of the person who drafted the January 2002 Memo, which is the FBI memorandum that erroneously states Plaintiff Garris threatened to hack the FBI. This information is highly relevant to Plaintiffs' Privacy Act claim under 5 U.S.C. § 552a(e)(7) because the January 2002 Memo was relied on by the author of the April 30 Memo and was the basis for the threat assessment memorialized

therein. The April 30 Memo is the sole piece of information Defendant has identified to justify its maintenance of the April 30 Memo, which describes Plaintiffs' First Amendment activity. Thus, Plaintiffs may seek to depose the author of the January 2002 Memo to determine whether the author provided consultation to the author of the April 30 Memo. Any privacy concerns can be mitigated by Defendant providing its response to Garris Interrogatory No. 3 pursuant to the protective order in place in this action.

3. Raimondo Interrogatory Nos. 9 and 10

Raimondo Interrogatory Nos. 9[14] and 10 seek the identity of the person who made the recommendation in the April 30 Memo to open a preliminary investigation of Plaintiffs and the identity of any other person who has information pertaining to the April 30 Memo. In supplemental responses, Defendant provided the names of two retired FBI special agents in response to Interrogatory No. 9 and the names of three individuals in response to Interrogatory No. 10. In requesting the identity of the aforementioned persons, each request also sought the following information which Defendant has failed to provide:

> With respect to a natural person, to state the person's name, present or last known business and residential address, present or last known position or business affiliation, his or her position or business affiliation at the time in question, a general description of the business in which he or she is engaged and a telephone number for the individual.

Plaintiffs may seek to depose the individuals identified in response to these interrogatories in order to obtain information regarding the authorized law enforcement activity to which Defendant's maintenance of the April 30 Memo is purportedly pertinent to and within the scope of and regarding their consideration of the January 2002 Memo, issues eminently relevant to Plaintiffs' Privacy Act claim under 5 U.S.C. § 552a(e)(7). Any

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[14] Plaintiffs note that Defendant's response to Raimondo Interrogatory No. 11, which seeks the names, addresses, and telephone number of all persons who have knowledge of the facts upon which Defendant based its responses, references Interrogatory Nos. 9 and 10. Thus, Defendant's failure to respond in full to Raimondo Interrogatory No. 9 and 10 implicates its response to Raimondo Interrogatory No. 11.

privacy or confidentiality concerns regarding disclosure of the requested information can be mitigated by Defendant providing its response pursuant to the protective order.[15]

D. Other Unmeritorious Objections

1. Vague and Ambiguous Objections

Defendant has objected to Raimondo Interrogatory Nos. 5-7 and 10-11 on the basis that each request is "vague and ambiguous." In its discovery responses, Defendant failed to identify any terms for these requests that were vague or ambiguous.[16] Defendant has objected to Raimondo Interrogatory No. 8[17] on the basis that the following terms are vague and ambiguous: "your act to maintain" and "eleven enclosures." Defendant has objected to RFP Nos. 3 and 4 on the grounds that the following terms are vague and ambiguous: "describe how," "produced . . . in this ACTION," and "'exercises rights guaranteed by the First Amendment' as that phrase is defined in 5 U.S.C. § 552a(e)(7)."

With the exception of the term "maintain," Defendant failed to state in its response to Plaintiffs' meet-and-confer letter the source of its confusion with the above terms. As to "maintain," Defendant stated that the term refers to actions taken at different times. During the in-person meet and confer, counsel for Plaintiffs clarified, with reference to the definition of the term "maintain," that the term includes maintain, collect, use, or disseminate, as that term is defined within the Privacy Act. Defendant must be compelled to provide any information withheld on the basis of these meritless objections.

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[15] If Defendant agrees to accept service of a deposition subpoena for each of the retired FBI agents and each of the three individuals identified in response to Interrogatory No. 10 (in the event they are not currently employed by the FBI), Plaintiffs will agree to withdraw their request to compel the contact information sought herein. Defendant has not yet agreed to do so, thus Plaintiffs seek a further response to these interrogatories.

[16] Defendant's response to Plaintiffs' meet-and-confer letter states that terms such as "Explain" and "Identify" used in "numerous interrogatories" are overbroad and vague. Even if these terms were vague and ambiguous—they are not—Defendant failed to assert these objections in its discovery responses and should be precluded from asserting them nearly three months after its discovery responses were due.

[17] Defendant also asserts "compound" as an objection to Raimondo Interrogatory No. 8 but offers nothing to substantiate its objection. Boilerplate objections are an insufficient basis upon which to withhold discovery. *Johnson & Johnston v. R.E. Service*, No. 03-2549, 2004 WL 3174428, at *1-2 (N.D. Cal. Nov. 2, 2004) (Larson, M.J.).

2. Unduly Burdensome Objections

Defendant objected to RFP Nos. 3-4 and Raimondo Interrogatory No. 11 as overbroad and unduly burdensome. RFP Nos. 3-4 seek documents describing Plaintiffs' exercise of First Amendment activity and Raimondo Interrogatory No. 11 seeks the basis of Defendant's denials of certain RFAs. The subject of the RFAs at issue is whether Defendant's maintenance of the April 30 Memo was pertinent to and within the scope of an authorized law enforcement activity, or otherwise expressly authorized by statute, at the time Defendant began to maintain the April 30 Memo or currently.

A party objecting to discovery "cannot simply intone this familiar litany": "overly broad, burdensome, oppressive, irrelevant." *Johnson*, 2004 WL 3174428, at *2. Rather, a party must "show specifically how, despite the broad and liberal construction afforded the federal discovery rules," each request is "overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." *Ibid.; see Dang v. Cross*, No. 00-13001, 2002 WL 432197, at *3-4 (C.D. Cal. Mar. 18, 2002) (even though interrogatories and requests for production called for the responding party to "state all facts" and produce "all" documents the requests were held not to be unduly burdensome).

As the objecting party, Defendant bears the burden of demonstrating, with detailed evidence, how much work is required to provide a response. Conclusory assertions are insufficient. Defendant has made no showing of any purported burden to responding to the above-identified requests and must be compelled to respond over its burdensome objection.

3. Calls for Legal Conclusion Objections

As a general objection to the RFPs and Raimondo's First Set of Interrogatories, Defendant states that it "objects to the definitions *to the extent* they call for legal conclusions." (Emphasis added). Defendant also objects to RFP Nos. 3-4 "*to the extent* [they] call for a legal conclusion." (Emphasis added). Boilerplate objections are an

insufficient basis upon which to withhold discovery. *Johnson*, 2004 WL 3174428, at *2. Defendant's discovery responses fail to provide any basis for these objections.[18]

VI. CONCLUSION

Plaintiffs would be prejudiced if they were denied discovery of documents and information relevant to their Privacy Act claim under 5 U.S.C. § 552a(e)(7). Defendant has not carried its burden to support its privilege objections, and none of its other objections justify its withholdings. Plaintiffs respectfully request that this Court order Defendant to provide further responses to the written discovery requests identified above.

Dated: January 22, 2015.

Respectfully submitted,

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[18] At most, the requests seek responses that are a mixture of law and fact and Defendant must produce any facts that are responsive.